

**BOARD OF ZONING APPEALS**  
**August 25, 2004**

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, AUGUST 25, 2004, AT 7:30 P.M.

Those present were:            Raymond Daughtry, Chairman  
   Bob Runkle, Vice-Chairman  
   Joel Snow, Member  
   Catherine Clossin, Planning Director  
   Bart Svoboda, Zoning Administrator  
   Marsha Alley, Secretary

The Chairman called the meeting to order adding that there would be two public hearings.

**PUBLIC HEARING: James & Helen Snow—Variance Request #04-003**

James & Helen Snow request a variance from Article 4 of the Greene County Zoning Ordinance which requires a minimum lot area of 2.0 acres. This request is on property that is identified on the County Tax Maps as 50A-(1)-A1 located on Fairlane Drive containing 1.60 acre and is zoned A-1, Agricultural, non-conforming. (VAR#04-003)

Mr. Daughtry asked Ms. Clossin to give a report.

Mrs. Clossin gave a digital presentation and reported that there is an existing single-family dwelling on the property which is served by public water. She added that the request is for a lot size variance so that the parcel can be divided into its original lots X and 1. She noted that in 1989, a lot size variance was granted for lots A, B, and C due to a right-of-way acquisition by VDOT and lot X was combined with Lot 1. She explained that the new lot X would be 43,121 square feet and new lot 1 would be 26,745 square feet. She noted that the variance would be from Article 4 of the Zoning Ordinance which requires a minimum lot size of two (2) acres. She pointed out the factors to be considered when reviewing a variance request. She stated that the Planning staff recommends denial of the request in that there is no “clearly demonstrable hardship approaching confiscation” and granting of the variance would create an additional non-conforming lot. She added that strict application of the terms of the ordinance will neither effectively “prohibit nor unreasonably restrict the use of the property”.

Mr. Daughtry swore in the speakers.

Helen “Virginia” Snow addressed the Commission. She stated that she would like to divide the parcel for her daughter and granddaughter. She added that it is too much work for her in the upkeep of the parcel. She noted that the county would benefit from the increase in taxes if the parcel was divided.

Mr. Runkle stated that it was unfortunate that this issue was not addressed in 1989 because it could have been approved but the regulations are different now.

Mr. Daughtry stated that the lots being combined in 1989 and being divided now would create a new non-conforming lot.

Mr. Snow stated that the plat for the Woodridge Subdivision was recorded prior to the adoption of the Zoning Ordinance; therefore, all of the lots are non-conforming. He added that the intent of the use of the lots prior to the adoption of the Zoning Ordinance deems the lot size as okay. He pointed out that in 1989 the variance was granted for lots A, B, and C and asked if there was any difference in the circumstance today. He noted that the lots will fall within the square footage regulation for lots served by public water and sewer, which these will be served, and they can meet the zoning setbacks.

Mr. Daughtry corrected that the property is not served by public sewer.

There was discussion on the size of the lots being created and the size of the surrounding lots.

Mr. Snow cited Section 16-2-1 noting that if property is conveyed to VDOT, any conforming lot prior to the conveyance shall be considered conforming after the conveyance as long as setbacks can be met.

Mr. Daughtry pointed out that the actions in 1971 and 1989 have no bearing on actions taken today.

Mr. Runkle agreed noting that the regulations are different today but added that it is a tough decision to make.

Mr. Daughtry stated that the Health Department regulations are also different today.

Mr. Snow stated that he had dealt with a similar issue in Albemarle County and he received approval due to the "grandfather" clause.

There was discussion regarding the lots being non-conforming and the zoning regulations at the time the variance was approved for lots A, B, and C.

Mr. Daughtry stated that the undue hardship consideration cannot be applied to this request.

Mr. Snow disagreed stating that the undue hardship was created by a misunderstanding of the interpretation on the zoning regulations in 1989 and in good faith the property owner conveyed the property to VDOT.

There was discussion on when the property was conveyed to VDOT.

Mr. Runkle asked Mr. Snow if he believed that the hardship was created by VDOT.

Mr. Snow stated that he believed that the conveyance of the property is where the hardship comes into play.

Mr. Daughtry stated that if the lots had not been combined in 1989, they would be okay at this time adding that the property owner created the conflict.

Ms. Clossin clarified that the Woodridge Subdivision plat was recorded in 1973.

Mr. Daughtry stated that he opposed the approval of the request under his interpretation of the Zoning Ordinance. He added that approving the request would be a convenience rather than alleviating a hardship.

Mr. Snow stated that the situation was created in 1989 and it seems that the property owner did not understand the ramifications of combining the lots. He added that if the intent of the use of the property is the same as the intent prior to 1989, it is neither "more" nor "less" non-conforming.

Mr. Snow made a motion to approve variance request #04-003 citing Section 16-2-1 and 17-2-2.1 item A of the Greene County Zoning Ordinance.

There was discussion on the motion and the sections cited in regard to the undue hardship and the original intent of the use of the property.

The motion died due to a lack of a second.

Mr. Runkle made a motion to deny variance request #04-003.

Mr. Daughtry seconded the motion.

Ms. Clossin called for the vote.

**AYE**  
Mr. Runkle

**NAY**  
Mr. Snow

Mr. Daughtry

The motion to deny carried by a 2-1 vote.

Mr. Daughtry explained that the majority of the Board of Zoning Appeals must agree in order to vary from the ordinance, noting that the Board is comprised of five members and three members are present tonight so the vote must be unanimous in order to vary from the

ordinance.

There was discussion on the status of the application.

Mrs. Snow asked for the decision.

Mr. Daughtry informed her that an undue hardship could not be determined and that the request was denied.

Mrs. Snow stated that she believes that it is a hardship because it is too much for her to maintain and that she has some health issues as well.

There was discussion on the applicant's options at this time.

Mr. Snow stated that he believes that if the BZA must vote unanimously to approve, then they must vote unanimously to deny.

Mr. Runkle suggested that the county attorney be contacted for his input.

**PUBLIC HEARING: Larry & Carol Dudding—Variance Request #04-004**

Larry & Carol Dudding request a 15 ft. front yard variance from Article 4 of the Greene County Zoning Ordinance which requires a 75 ft. front yard setback. This request is on property that is identified on the County Tax Maps as 19-(A)-28 located on Midfields Drive containing 11.04 acres and is zoned A-1, Agricultural.(VAR#04-004)

Mr. Daughtry asked Ms. Clossin to give a report.

Ms. Clossin stated that the +/- 11 acres is zoned A-1 and a portion of the home site is located in the flood plain. She stated that they are seeking to reduce the front setback from 75' to 60 'due to the location of the flood plain in the rear of the property. She reviewed the factors to be considered when reviewing a variance request. She added that the Planning staff recommended approval of the request in that the strict application of the ordinance would produce undue hardship including specifically an increased risk of flooding within the South River flood plain, also the hardship is not shared generally by other properties in the zoning district and the same vicinity, and the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

Mr. Daughtry swore in the speakers.

Larry Dudding addressed the Board. He stated that the parcel has one building site on it which has an elevated slope. He noted that the Health Department had set the septic field site prior to his purchasing the property. He explained that the setback requirement

places the home in the flood plain in the rear and this could be alleviated if the setback was reduced from 75' to 60', noting that the additional 15' forward would move the house up the hill enough to avoid the flood plain. He added that the flood plain also makes obtaining loans and insurance more difficult.

Mr. Daughtry asked if the property line goes down the center of the right-of-way.

Mr. Dudding stated that it does.

Tommy Shelton, as the previous property owner, confirmed this to be true.

Mr. Daughtry stated that he had visited the site and noticed the rise and fall in the land. He asked if the creek was the rear property line.

Mr. Dudding stated that the creek runs through the property and towards the old buildings that are existing there.

Mr. Daughtry asked if there had been high water there in 1995.

Mr. Shelton stated that if the water was not in that specific area in 1995, it was very close.

Mr. Daughtry stated that during normal flooding, waters would likely not reach the proposed home site.

Mr. Dudding agreed.

Mr. Snow asked if the creek would be as concerning as the South River.

Mr. Dudding stated that the creek is closer but added that the South River contributes to it.

Mr. Snow asked if there were any other building sites on the property.

Mr. Dudding described the topography of the property and noted that the proposed site was the only site suitable for building.

Mr. Snow asked if the house is shown on the plat on the highest point.

Mr. Dudding stated that the house is drawn on the plat at the highest point.

Mr. Runkle asked what the traffic load is for the road.

Mr. Dudding stated that the right-of-way serves the farm and possibly two or three other lots.

Mr. Shelton agreed noting that they are the only two using the road at this time but added that a few others may use the road during high waters.

Mr. Runkle stated that the road is not likely to become a thoroughfare.

Mr. Dudding agreed noting that they felt fortunate to purchase to property because other people in the area were interested in the property as well.

Mr. Snow asked how wide the right-of-way is.

Mr. Dudding stated that it is a 50' right-of-way.

There was discussion on the road, the right-or-way, and the potential traffic there.

Mr. Runkle stated that he believed that there was agreement that the flood plain presented a hardship.

Mr. Daughtry agreed and asked if the requested 15' would correct the problem.

Mr. Dudding stated that it would.

Mr. Daughtry asked if the setbacks could be maintained by turning the house.

Mr. Dudding explained that turning the house would actually place it further into the flood plain.

Mr. Snow made a motion to approve variance request #04-004 for a 15' front setback variance reducing the front setback requirement from 75' to 60' in order to allow a house to be built outside of the flood plain.

Mr. Runkle seconded the motion.

Ms. Clossin called for the vote.

**AYE**

Mr. Runkle  
Mr. Snow  
Mr. Daughtry

**NAY**

The motion to approve carried by a 3-0 vote.

## **MINUTES**

Mr. Runkle made a motion to approve the minutes of July 28, 2004 as presented.

Mr. Snow seconded the motion.

The minutes of July 28, 2004 were unanimously approved.

## **OLD/NEW BUSINESS**

Ms. Clossin informed the Board that Mrs. Walter has withdrawn her variance request that was tabled at last month's meeting. She added that Mrs. Walters is dealing with some health issues at this time.

## **OTHER MATTERS**

Ms. Clossin introduced Bart Svoboda, the new Zoning Administrator.

Mr. Svoboda greeted the Board and stated that he looked forward to working with them.

Mr. Runkle asked if dirt could be added to a site in order to accommodate the flood plain.

Mr. Svoboda stated that it could be an option but it would have to be done correctly with the guidance of the Army Corps of Engineers.

Mr. Snow stated that homes could be built in the flood plain under certain regulations.

Mr. Svoboda stated that certain Federal regulations must be met.

There was discussion on this issue.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Marsha Alley*

Marsha Alley, Secretary